



## CITY OF PHILADELPHIA

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April 19, 2011

Diana Lopez  
Senior Editor  
Sunshine Review

dlopez@sunshinereview.org

### VIA ELECTRONIC MAIL

Re: April 12, 2011 Right To Know Requests

Dear Ms. Lopez:

Thank you for writing to the City of Philadelphia ("the City") with your requests for information pursuant to the Pennsylvania Right-To-Know Law, 65 P.S. § 67.101 et seq., (the "Act").

On April 12, 2011 the City received your requests for the following information.

- Records of **all salaries more than \$150K** from January 1, 2008 to January 1, 2011 \*If possible, something like a spreadsheet with information "Name," "Title/Position," Department," "Year," "Salary," "Benefits." **[Part 1]**.
- Records of salaries from January 1, 2008 to January 1, 2011 for positions relevant to the county and city:
  - Mayor
  - City council members
  - City manager
  - Board of supervisors
  - County mayor salary
  - County manager or chief administrator
  - County/district attorney
  - Sheriff
  - Assessor

**[Part 2]**.

- Benefits information for items 1 and 2, from January 1, 2008 to present day or most recently available records, if applicable. **[Part 3]**.
- Overtime hours for retiring personnel from January 1, 2008 to January 1, 2011. **[Part 4]**.
- City cell phone use from January 1, 2008 to January 1, 2008. **[Part 5]**.
- City personal car use from January 1, 2008 to January 1, 2011. **[Part 6]**.

Your request for information is attached. This letter constitutes the City's response to your request.

*Your requests are granted, in part, and denied in part as set forth more fully below.* Records responsive to your request are below.

At the outset, all parts of your request are denied, at least in part, for insufficient specificity. While Parts 1-3 of your request seeks "records" on certain subjects, a request for "records" is not sufficiently specific to identify what type of records requested. Such requests could conceivably encompass a wide variety of records that are maintained by numerous departments.<sup>1</sup> The Act requires, among other things, that a written request "identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested . . . ." 65 P.S. § 67.703.<sup>2</sup> The requirement of specificity is necessary to (1) ensure that a requestor provides enough information so that "an agency can determine whether to grant or deny the request[;]" *Nanayakkara v. Casella*, 681 A.2d 857, 859-60 (Pa. Commw. 1996), and (2) "to prevent agencies from suffering undue interference and obstruction of their daily functions; . . . [which] would be unavoidable if agency officials always could be subjected to broad and unlimited requests for documents and records." *Mooney v. Temple Univ. of the Commonwealth Sys. Of Higher Educ. Bd. Of Trustees*, 292 A.2d 395, 397 n.8 (Pa. 1972) ("requests for inspection [must] be specific and particular seeking disclosure of named documents or records rather than broad and unlimited requests for undefined bodies of documents or records").

The Pennsylvania courts have repeatedly held that requests for "all records", similar to the parts of your request for "Records of [X]", are not sufficiently specific. *See, e.g., Arduino v. Borough of Dunmore*, 720 A.2d 827, 831 (Pa. Commw. 1998) (holding that a request for "'all records' related to the disbursement of the funds for [certain] public projects" lacked sufficient specificity), *appeal denied*, 741 A.2d 195 (Pa. 1992); *Hunt. v. Pa. Dep't of Corr.*, 698 A.2d 147, 149 (Pa. Commw. 1997) (holding that requests, including a request for all documents given by Department of Correction to inmate and by inmate to Department, lacked sufficient specificity); *Associated Builders and*

<sup>1</sup> For example, Parts 1 and 2 of your request are so broad that they could encompass emails, notes, memoranda or other records concerning the salaries referenced.

<sup>2</sup> This language is identical to the language in § 2(c) of the prior Right-to-Know Law, 65 P.S. 661., *et seq.* Accordingly, the case law interpreting this language in the context of the old Right-to-Know Law remains binding. *Dep't of Conservation & Natural Res. v. Office of Open Records*, 1 A.3d 929, 940-941 (Pa. Commw. 2010) (interpreting language in the new Act by relying on prior precedent holding that "[t]he language in the two definitions is virtually identical. Faced with a prior judicial interpretation . . . by . . . the Pennsylvania Supreme Court of the account/voucher/contract language in the RTKL, even though issued in the context of the Old Law, we are not at liberty here to ascribe a different meaning to the same language.").

*Contractors, Inc. v. Pa. Dep't of Gen Servs.*, 747 A.2d 962, 965-66 (Pa. Commw. 2000) (holding that requests “akin to document requests under the civil discovery rules, *i.e.*, ‘any and all documents relating to [subject matter]’” lack sufficient specificity); *accord PSP v. OOR*, 995 A.2d. 515, 517 (Pa. Commw. 2010) (“The portion of the request seeking any and all records, files or communications [concerning subject matter] is insufficiently specific for the PSP to respond to the request.”). Such broad requests have been, and will be, denied.

Your request is insufficiently specific such that the City is unable to determine specifically what records are being requested, whether you are requesting public or non-public records, or even what City departments may maintain the records you are attempting to request. The City is a large entity, and records are maintained in numerous City departments. Without specifying what records are sought with sufficient specificity the City is unable to respond to your request. As a courtesy, the City has narrowed and interpreted Parts of your request as best it could and provided what it believes to be responsive information.<sup>3</sup>

**Response to Part 1:** *Your request is granted, in part, and denied in part.* This request is denied, in part, as it is insufficiently specific such that the City is unable to determine what records and/or benefit information is being requested as discussed above. The City has interpreted this Part 1 of your request as seeking a spreadsheet reflecting the name and job title of those individuals employed by the City that have an annual salary of over \$150,000 for the calendar years 2008-2011. At the outset, under the Act, the City is not required “create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the City does not currently compile, maintain, format or organize the record.” 65 P.S. § 67.705. Without waiving the forgoing grounds for denial, and those stated above, your request is granted and a spreadsheet with information responsive to your request is attached.<sup>4</sup>

**Response to Part 2:** *Your request is granted, in part, and denied in part.* This request is denied, in part, as it is insufficiently specific such that the City is unable to determine what records and/or benefit information is being requested as discussed above. The City has interpreted Part 2 of your request as seeking a spreadsheet reflecting the name and salaries of those individuals who hold the positions listed in Part 2 of your request for the calendar years 2008-2011. At the outset, under the Act, the City is not required “create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the City does not currently compile, maintain, format or organize the record.” 65 P.S. § 67.705. Without waiving the forgoing grounds for denial, and those stated above, your request is granted, in part, and a spreadsheet responsive to your request is attached<sup>5</sup> which contains information for certain listed positions as described below:

- **Mayor:** Information provided.
- **City Council Members:** Information provided.
- **City manager:** The City has no “City manager” position.

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<sup>3</sup> This response should not be interpreted as a representation that a similar request for information will be treated similarly.

<sup>4</sup> Please see footnote three. In addition, it was not practical to create a spreadsheet precisely as suggested in your request. Moreover, it is not clear what information concerning “benefits” you sought to be included on the spreadsheet as this part of your request refers to salary, not benefits.

<sup>5</sup> Please see footnote three.

- **Board of Supervisors:** The City has no “board of supervisors” position(s).
- **County Mayor:** *See* responsive information for Mayor. The City has no separate position of “County Mayor.”
- **County manager or chief administrator:** The City has no “county manager or chief administrator” positions.
- **Sheriff:** Information provided.
- **Assessor:** This request is interpreted as requesting salary information for the Chief Assessment Officer, and such information has been provided. The position of Chief Assessment Officer was created on October 1, 2010, and the City previously did not have such a position.

**Response to Part 3 of Your Request:** *Your request is granted, in part, and denied in part.* This request is denied, in part, as it is insufficiently specific such that the City is unable to determine what records and/or benefit information is being requested as discussed above. Subject to, and without waiving the forgoing grounds for denial, the City has interpreted this request as requesting Fringe Benefits Memos published by the City Department of Finance that cover the period January 1, 2008 to present day. Fringe Benefits Memos for Fiscal Years 2008 to 2011 are attached.

**Response to Part 4-6:** *Your request is granted, in part, and denied in part.* At the outset, to qualify as a written request under the Act, “the request must clearly seek “records” as that term is defined under the [Act].” *Pacelli v. City of Hazelton*, Docket No.: AP 20100492, 2010 PA O.O.R.D. LEXIS 443 (OOR June 29, 2010). The Office of Open records has repeatedly held that “[a] requester cannot merely submit questions, **or requests other than for records, under the [Act].**” *See, e.g., id* (emphasis added). In addition the OOR recently held that where a “Requestor [does] not identify records sought and frame[s] his request as questions only . . . the City of Philadelphia ha[s] no obligation under the [Act] to respond.” *Osborne v. City of Philadelphia*, OOR Dkt. AP 2011-0330 (OOR Letter, March 30, 2011) (emphasis omitted). Since such a request is not a proper request under the Act, the OOR has held that “no appeal rights under the [Act] [are] triggered.” *Id.* Parts 4-6 of your request on their face do not request records. As a result, this letter is an informal response to your request provided as a courtesy.

Parts 4 and 5 of your request are denied. Both parts of your request are insufficiently specific such that the City is unable to determine what records or information you are requesting as discussed above and the City simply has no reasonable interpretation to limit these parts of your request. By way of further answer, it is unclear what you mean by the terms “retiring personnel” and “City cell phone use.”

Part 6 of your request is also insufficiently specific such that the City is unable to determine what records or information you are requesting. However, the City has attached the policy on personal use of City vehicles from the “City of Philadelphia - Vehicle Use and Assignment Policy” (“Policy”) to the extent this document is helpful and/or responsive. The Policy provides that “City vehicles are municipal property and may not be used for personal or private business.” 6.1.1. The Policy further provides that “City vehicles are not to be used for transportation of family members or any other non-City personnel. Nor can anyone other than a city employee operate a city vehicle.” 6.1.2.

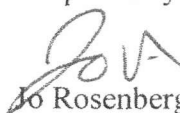
The City reserves its rights to assert additional bases for denial if additional responsive records are located after a review of such records. Additionally, as noted above all parts of your request are insufficiently specific such that the City has been unable to determine what records have been

requested. As a result, the City can not accurately determine all necessary bases of denial for such records that it has been unable to identify. The City reserves its right to assert additional basis for denial to the extent your request encompasses records that are not "public records" as that term is defined under the Act.

Should you wish to contest any part of this decision, you may file an appeal with the Office of Open records as provided for in 65 P.S. § 67.1101. You have 15 business days from the mailing date of this response to challenge the City's response. Please direct any appeal to the Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120-0225.

Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Respectfully submitted,

  
Jo Rosenberger Altman

Attachments

Cc: James P. Leonard, Chief Deputy City Solicitor  
Celia O'Leary, OHR  
Michael Kauffman, Finance